

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

DERRICK DEON VINCENT,

Petitioner,

vs.

E. K. MCDANIEL, et al.,

Respondents.

Case No. 2:10-CV-01991-JCM-(RJJ)

**ORDER**

Petitioner has submitted an application to proceed in forma pauperis (#1) and a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court finds that petitioner is unable to pay the filing fee. The court has reviewed the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. The court will dismiss one ground, and the court will serve the petition upon respondents for a response.

In the Eighth Judicial District Court of the State of Nevada, petitioner was convicted of robbery and failing to stop on the signal of a police officer. Petitioner appealed, and the Nevada Supreme Court affirmed. Petitioner then commenced this action.

Ground 1 is a claim that the state violated petitioner's right to a speedy trial, guaranteed by the Sixth Amendment. Respondents will need to respond to this ground.

Ground 2 is a claim that the trial court erred when it denied petitioner's motion to dismiss the prosecution because he was not brought to trial within the time allotted by Nev. Rev. Stat. § 178.495. First, § 178.495 was repealed in 1967. 1967 Nev. Stat. 1472. The current state law provides, in relevant part, "If a defendant whose trial has not been postponed upon the defendant's

1 application is not brought to trial within 60 days after the arraignment on the indictment or  
2 information, the district court may dismiss the indictment or information.” Nev. Rev. Stat.  
3 § 178.556(1). Second, petitioner is claiming that the trial court violated state law. “A federal court  
4 may not issue the writ [of habeas corpus] on the basis of a perceived error of state law.” Pulley v.  
5 Harris, 465 U.S. 37, 41 (1984). To the extent that petitioner claims that the district court’s denial of  
6 his motion to dismiss violates the right to a speedy trial guaranteed by the Sixth Amendment,  
7 ground 2 is redundant because petitioner raises the same claim in ground 1. The court will dismiss  
8 ground 2.

9           Petitioner has submitted a motion for the appointment of counsel (#2). Whenever the  
10 court determines that the interests of justice so require, counsel may be appointed to any financially  
11 eligible person who is seeking habeas corpus relief. 18 U.S.C. § 3006A(a)(2)(B). “[T]he district  
12 court must evaluate the likelihood of success on the merits as well as the ability of the petitioner to  
13 articulate his claims pro se in light of the complexity of the legal issues involved.” Weygandt v.  
14 Look, 718 F.2d 952 (9th Cir. 1983). There is no constitutional right to counsel in federal habeas  
15 proceedings. McCleskey v. Zant, 499 U.S. 467, 495 (1991). The factors to consider are not  
16 separate from the underlying claims, but are intrinsically enmeshed with them. Weygandt, 718 F.2d  
17 at 954. After reviewing the petition, the court finds that appointment of counsel is not warranted.

18           Petitioner has submitted a letter to the clerk (#3) that was docketed as a motion for  
19 copies. Petitioner asks the court to serve the petition upon the respondents. The court would do this  
20 pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts  
21 even if petitioner did not ask, and the court grants this motion.

22           IT IS THEREFORE ORDERED that the application to proceed in forma pauperis  
23 (#1) is **GRANTED**. Petitioner need not pay the filing fee of five dollars (\$5.00).

24           IT IS FURTHER ORDERED that the clerk of the court shall file the petition for a  
25 writ of habeas corpus pursuant to 28 U.S.C. § 2254.

26           IT IS FURTHER ORDERED that ground 2 of the petition is **DISMISSED**.

1 IT IS FURTHER ORDERED that the clerk shall electronically serve upon  
2 respondents a copy of the petition. In addition, the clerk shall return to petitioner a copy of the  
3 petition.

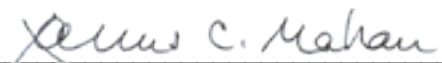
4 IT IS FURTHER ORDERED that respondents shall have forty-five (45) days from  
5 the date on which the petition was served to answer or otherwise respond to the petition. If  
6 respondents file and serve an answer, then they shall comply with Rule 5 of the Rules Governing  
7 Section 2254 Cases in the United States District Courts, and then petitioner shall have forty-five  
8 (45) days from the date on which the answer is served to file a reply.

9 IT IS FURTHER ORDERED that henceforth, petitioner shall serve upon respondents  
10 or, if appearance has been entered by counsel, upon the attorney(s), a copy of every pleading,  
11 motion or other document submitted for consideration by the court. Petitioner shall include with the  
12 original paper submitted for filing a certificate stating the date that a true and correct copy of the  
13 document was mailed to the respondents or counsel for the respondents. The court may disregard  
14 any paper received by a district judge or magistrate judge that has not been filed with the clerk, and  
15 any paper received by a district judge, magistrate judge, or the clerk that fails to include a certificate  
16 of service.

17 IT IS FURTHER ORDERED that petitioner's motion for the appointment of counsel  
18 (#2) is **DENIED**.

19 IT IS FURTHER ORDERED that petitioner's motion for copies (#3) is **GRANTED**.

20 DATED: January 24, 2011.

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23 JAMES C. MAHAN  
24 United States District Judge  
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